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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/655,891	09/05/2003	Gerald Moss	MOSS-0985	7199
23123	7590	10/06/2004		EXAMINER
SCHMEISER OLSEN & WATTS				SIRMONS, KEVIN C
18 E UNIVERSITY DRIVE				
SUITE # 101			ART UNIT	PAPER NUMBER
MESA, AZ 85201			3763	

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/655,891	MOSS, GERALD	
	Examiner	Art Unit	
	Kevin C. Sirmons	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 July 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2 and 4-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 12-14 is/are allowed.
- 6) Claim(s) 1, 2, 4-11 and 15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6-11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parks U.S. Pat. No. 4,685,901.

Parks discloses a feeding and aspirating tube assembly comprising: a first outer aspirating tube (50); a second inner feeding tube (51); wherein the second inner feeding tube is removably disposed inside the first outer aspirating tube (fig. 6); as to claim 2, (fig. 6); as to claims 7, 8, 9, (fig. 6); as to claims 10 and 11, (col. 3); as to claims 12-14, under the principles of inherency, it a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device.

Parks discloses a feeding tube assembly substantially as claimed except that it is silent at to the distal end of the inner tube being in a range from approximately 2 cm to approximately 4 cm from a distal end of the outer tube. It would have been an obvious matter of design choice to vary the lengths of both tubes, since such a modification would have involved a mere change in size (lengths) of a component. A change in size (lengths) is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1995). As to claims 4-6, it would have been an obvious matter of design choice to vary the distance of the openings relative to the distal end of the outer tube, since such a modification would have involved a mere

change in the location of the holes. A change in location of the holes is generally recognized as being within the level of ordinary skill in the art.

As to claim 15, see above rejection.

Response to Arguments

Applicant's arguments with respect to claims 1, 2 and 4-15 have been considered but are moot in view of the new ground(s) of rejection.

In terms of the lengths, applicant has not disclosed in the specifications that the various lengths provides an advantage, is used for a particular purpose, or solves a stated problem in the art. One of ordinary skill in the art, furthermore, would have expected Applicant invention to perform equally well with the device taught by Parks. Basically, applicant's length lacks criticality.

As to the alleged lightly regarded removably disposed limitation, it is clearly taught in Parks (col. 4).

As to claim 15, any hollow tube is an aspiration tube or feeding tube or whatever can conceivably pass through the tube is the tube. Simply a tube is a tube! Applicant's tube has NO structure.

Allowable Subject Matter

Claims 12-14 are allowable over the prior art of record.

Art Unit: 3763

Conclusion

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703) 306-5410. The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.



Kevin C. Sirmons

Patent Examiner

10/4/04